UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al.,	:	NO. 1:01-CV-00528
Plaintiffs,	:	
v.	:	**ORDER**
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al.,	:	
Defendants.	:	

This matter is before the Court on the Motion of State Farm Fire and Casualty Company to Intervene (doc. 70), to which Plaintiffs filed no response.

State Farm Fire and Casualty Company (hereinafter, "State Farm") seeks an order from the Court pursuant to Fed. R. Civ. P. Rule 24(a) and (b), allowing it to intervene in this case as a third-party Defendant (doc. 70). State Farm issued to Defendant Thomas Condon a business policy of insurance, which State Farm posits does not cover Plaintiffs' claims (Id.). However, State Farm seeks to intervene so as to gain the Court's declaration that it is not obligated to defend or indemnify Condon against the claims of Plaintiffs (Id.). State Farm had already filed a declaratory judgment action in the Hamilton County Court of Common Pleas, but subsequent to this Court's class action certification in the related case of Chesher v. Neyer, No. 1:01-CV-00566, opted to pursue intervention in this Court rather than to litigate coverage issues in state court (Id.).

State Farm similarly moved to intervene in the Chesher case. The Court issues a concurrent ruling in Chesher in response to such motion.

Under Sixth Circuit law, Rule 24 (a) has been interpreted to establish four required elements that must be established in order for the district court to grant intervention as of right: "(1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." Michigan State v. Miller, 103 F.3d 1240, 1245 (6th Cir. 1997), accord Grutter v. Bollinger, 188 F.3d 394 (6th Cir. 1999).

State Farm argues that it is entitled to intervene under Rule 24(a) as its motion is timely. The determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances. Bradley v. Milliken, 828 F.2d 1186, 1191 (6th Cir. 1987). The Sixth Circuit has held that the following factors should be considered: (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention. Grubbs v. Norris, 870 F.2d 343, 345 (6th Cir. 1989).

The Court finds that State Farm's motion is untimely because of the point to which this suit has progressed. The discovery deadline is set for November 1, 2003, and the dispositive motion deadline is December 1, 2003 (doc. 62). The Court finds no advantage in delaying the current schedule, particularly when State Farm has an adequate remedy in the state court system, for which it has already initiated a legal action. For these reasons, and the reasons articulated in the parallel order issued concurrently in Chesher, No. 1:01-CV-00566, the Court finds State Farm's requested intervention inappropriate in this case.

Accordingly, the Court DENIES the Motion to Intervene of State Farm Fire and Casualty Insurance Company (doc. 70).

SO ORDERED.

Dated: October 30, 2003

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge